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Dulles: The Secretary of State grabbed the spotlight in the past ten days as the "international man of the hour" in the eyes of the free world — as a result of his sensational speech on the subject of Red China.

The political upheaval in Soviet Russia this week, according to diplomatic row, confirms the wisdom of Dulles' "hold the line against the Reds" policy and strengthens the hand of those within the Administration who oppose the "appeasers."

Dulles adeptly seized the leadership of the free world forces and of the anti-appeasement elements in the U.S. when he forcefully made three points in his address: (1) America has no intention of recognizing the Peiping regime; (2) America regards trade with Red China as dangerous to our interests; and (3) America would not tolerate the admission of Red China into the UN.

Advance billing by the State Department as a "major statement" underlined the importance of the speech; and in the aftermath the fury of the *Daily Worker* and the icy criticism of the "liberals" testified to the fact that the Secretary had "drawn blood."

The inside story of what inspired Dulles to give the speech and how he went about it offers some instructive sidelights on what goes on in the State Department and White House:

(1) Following Ike's signal for appeasement of Red China (as reported in HUMAN EVENTS for June 8 and 22), the State Department began to receive from our Ambassadors and intelligence sources in Asia and the Mideast dismaying reports which grew in volume over the weeks — to the effect that the Governments of our staunchest allies (Korea, Formosa, Thailand, Viet-Nam, Philippines, Pakistan and Turkey) were very much disturbed by signs of our appeasement of Red China. Our expert observers in these areas solemnly warned Washington that the U.S. risked losing these valuable allies if this appeasement continued. Dulles — analyzing these reports — decided that a vigorous public statement was absolutely necessary.

(2) Dulles himself wrote the speech (although some sources think that Assistant Secretary Walter Robertson was called in for advice). And the Secretary sounded out members of the White House Palace Guard. It is interesting and significant that the latter reacted adversely and claimed that the President could not possibly endorse such an utterance.

(3) This reaction of the Palace Guard may well have provided the fuel for Dulles' next effort — according to some who know the Secretary's character. Dulles ("I'll show 'em I know the President better") went over the heads of the Palace Guard and saw the President about the matter of the speech. What went on between the two remains a secret. But it is definitely known on high levels of the State Department and the White House that the President endorsed the speech.

This is the reason why even such "liberals" as the *New York Times'* editorial writer accorded the address such proper — albeit frigid — respect. And that is also why new and more optimistic reports have started to come in from the Far and Middle East.

Foreign Aid: Internationalists of both major parties are united in an all-out effort to ram through the House something they long have wanted but never before have even come close to achieving: authority to make long-term foreign aid commitments.

That, in the view of conservative legislators, is what the bill's "International Development" loan fund amounts to. They claim a fighting chance of eliminating provisions for the loan fund when the foreign aid authorization bill is brought up in the House within the next ten days; but, they say, this probably will depend on the amount of mail received by Representatives from constituents in opposition to the fund.

"Now is the time," says one economy-minded legislator, "for the folks back home to come to our aid with letters — if they really want to stop an international boondoggle that could run along haunting them for years."

Popular indignation against the Supreme Court predominates in the current mail to members of Congress. This works out to the detriment of the economy bloc, because many who clamored for cuts in the Budget (which, however, they still strongly approve) now reserve their epistolary efforts for assailing the Court. Hence, the mail situation tends to weaken the pressure on Congress for economy.

Vice President Nixon, House Republican leader Joe Martin, State Department officials and White House staffers all are using every argument at their command

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to persuade wavering legislators to vote for the fund. They are saying that the President regards it as even more important than restoration of the substantial cuts made in his "new money" requests.

The Administration can live with the money cuts, they say, because so many billions are left over, unspent, from previous foreign aid appropriations. But they argue impassionately that the loan fund is essential to putting foreign aid on a "sound" basis — an argument unimpressive to many House members who are straddling the fence until they see, from their mail, what their constituents think.

The International Development program is to be a "revolving fund" kitty from which loans can be made to foreign countries on long-term commitments. Critics say only the most naive would expect any substantial portion of the loans ever to be repaid; they also say that with such a continuing authority and no need for the Administration to justify its program to Congress each year, it would be virtually impossible for legislators ever to find out what is being done with the money.

As passed by the Senate, the bill provided for $500 million to be put into the "kitty" this year and $750 million in each of the next two years. The House Foreign Affairs Committee first knocked out the 1959 and 1960 authorizations by a 9 to 7 vote; but Martin, Nixon, Speaker Rayburn, et al, spent the week end working on committee members, and the next Monday the committee reversed itself, 19 to 10, to provide $500 million a year for three years — making a total kitty of $1.5 billion.

President: The famous "White House breakfasts," given by the President for members of Congress, have turned out to be a case of "reverse English." Conceiving the "breakfasts" originally as a means by which the President could informally "sell" GOP members on his policies and views, the Palace Guard have discovered with some dismay that the President "did not change a vote"; but that, on the other hand, the affable Ike, after friendly get-togethers with the Congressmen, began to reflect the Congressional point of view. Indeed, GOP members of Congress express no little satisfaction with these affairs; they had a chance to "shoot off their mouths" to Ike and the latter — they think — was visibly impressed.

At any rate — according to vivid accounts relayed to members of the HUMAN EVENTS staff — this is the kind of back-and-forth which marked these functions:

(1) When the President joined a table headed by Representative Simpson of Pennsylvania, he received from this member of Congress the warning that everyone at the table was opposed to Federal Aid to Education. Whereupon members took down their hair and Ike was apparently surprised at hearing what were to him new facts and opinions critical of Federal aid — particularly the fact that such aid was not needed, that the states were taking care of the problem locally.

The next day, members of Congress noted that Ike seemed to throw cold water on the Federal Aid to Education bill.

(2) Ike was apparently impressed also by remarks of some GOP House members on the subject of atomic disarmament. They said that in last fall's election campaign, the people had obviously reacted unfavorably to Adlai Stevenson's demand for a suspension of atomic tests. Now, they pointed out, Stassen is saying the same things as Adlai and is over there at the Conference. How come? These remarks seemed to strike Ike as new and very interesting.

(3) Finally, they were able to report to Ike the extremely critical sentiments received from constituents about the Supreme Court's recent decisions on Communist cases. The President, it is said, looked very grim at the mention of Brennan and Warren. Some members who talked with him got the impression that the President, regretting the two choices, is angry with those aides who originally advised him to name them.

Immigration: A 1957 legislative blitz — during the home stretch of the session — to eviscerate the Walter-McCarran Act is feared by conservative members of Congress (who recall how a similar blitz almost succeeded a year ago at this time).

They perceive, in a bill introduced by Senator Kennedy (S. 2410), a number of provisions which they believe will go far to undermine the basic provisions of the Walter-McCarran Act, as follows:

(1) The Kennedy proposal would transfer unused quotas from Northern and Western Europe to Eastern and Southern Europe — thus fundamentally altering the "national origins" pattern laid down by the immigration law.

(2) The bill opens the gates to a much larger number of immigrants and refugees than otherwise would be allowed. Thus perhaps 150,000 who would be excluded under strict enforcement of the Walter-McCarran Act would gain admittance during the next two years.

Observers on Capitol Hill warn that Democratic politics (aided by wobbling Republican members) might well put over this amendment to the basic immigration law at the end of the session. Senator Kennedy is running for the Presidency, wants to corral big-city votes and is sedulously courting the dominant Southern Democratic Congressional leadership. Patriotic groups, alarmed by the development, have been alerted to oppose any changes.

Conservative Victories: Conservative forces in the House scored three important victories last week:

(1) In an "upset" vote Tuesday, a House Interior Subcommittee delivered a heavy blow to the proposed

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"high dam" in Hells Canyon, Idaho. The 15-12 vote against the enabling bill, which passed in the Senate last week, is viewed as the death warrant for the socialist Big Government measure.

(2) A second victory was quick action by the House Judiciary Committee to rescue FBI files from the clutches of Communists and other defendants in Federal suits. The bill — although not strong enough in the view of many anti-Communists — directs trial judges to screen FBI reports, instead of turning them indiscriminately over to the defense on request. A similar bill has been reported out for action in the Senate.

(3) The third — and most emphatic — conservative triumph was the action of the House Foreign Affairs Committee last Friday. The Committee favorably reported Representative Frank Bow's H. J. Res. 16, which provides for cancellation or renegotiation of the now highly unpopular "Status of Forces" agreements. A noteworthy feature of the vote was the attempt of House Democrats (including such left-wingers as Wayne Hays of Ohio) to ride the crest of public sentiment against the agreements.

Capitol Hill veterans note that the Democrats thus completely reversed themselves on the "Status of Forces" issue. A year ago, it is recalled, the Democrat-dominated Foreign Affairs Committee defeated the Bow proposal by a 19 to 9 vote. This week's vote of the same committee was 18 to 8 in favor of the bill. The Democrats now seem intent on making as much political capital as possible out of popular revulsion against the "Status of Forces" agreements.

Also noteworthy in the action of the Committee, and in its report, was the vigorous attempt of Administration forces to discredit the drive against the agreements. Statements by Secretary of Defense Wilson and Under Secretary of State Herter, as well as a vehemently worded minority report, were filed with the Committee. Current Administration maneuvering, in the view of Representative Bow, is parallel to that of Secretary Dulles last month. The Wilson-Herter statements, Bow believes, were intended to sway opinion in the Supreme Court, as it considered the Girard case.

ILO: With no fuss or fanfare, the Senate has succumbed to Administration pressure and passed a bill to increase from $1.75 million to $2 million the maximum which this country can contribute annually to operational costs of the ultra-dubious International Labor Organization.

Even though the bill's figure is well below the $3 million maximum sought by the Administration, Capital observers view its passage as a further result of slowing down of the economy drive. They also point out that the Administration made the same request in 1955 and 1956, and never was able even to get a bill out of committee.

The U.S. Chamber of Commerce and the National Association of Manufacturers, which jointly nominate a U.S. Employer Delegate to the ILO, had opposed any increase — pending a thorough Congressional study to determine the basis for changes that the ILO has become simply a sounding board for Communist propaganda (see HUMAN EVENTS for June 22).

Sent to the House, the increased-maximum bill was referred to the Foreign Affairs Committee — so quietly that most committee members, engrossed in the foreign aid bill fight, did not even know it had appeared on their calendar.

Picketing: Lost in the welter of its anti-anti-Communist rulings was another Supreme Court decision holding to a more traditional philosophy. This one upheld a state (Wisconsin) court injunction against a picket line; the picketing was aimed at persuading an employer to sign a union shop contract and thereby blanket all his employees into the Teamsters Union.

The case involved Vogt, Inc., which operates a gravel pit in Oconomowoc, Wis., with 15 to 20 employees. The Teamsters sought to enroll them as members; most refused. Then the union set up a picket line, as a result of which drivers for several trucking companies refused to haul goods into or out of the Vogt property.

A state court enjoined the picketing on grounds it was illegal under Wisconsin law, which prohibits picketing in the absence of a labor dispute. Justice Frankfurter, for a five-man Supreme Court majority, held the injunction was valid since the picket line was merely for the purpose of coercing the employer into coercing his employees into joining the union.

Lawyers say the effect of the decision is to reaffirm the injunction authority of state courts, but only in small-business cases; cases involving larger firms can be brought under Federal law, which generally prohibits anti-picketing injunctions.

The Court's three dissenters (Chief Justice Warren, Justices Black and Douglas) charged that the decision improperly permits state courts to curb the freedom of speech granted by the Constitution's First Amendment.

TV Policy: The televised appearances of Communist bosses Tito and Khrushchev are the object of widespread criticism in the Capital this week.

Particularly distressing to many legislators is the way that American interviewers assist the Communist bosses in putting their best "coexistence" feet forward. Representative Ray J. Madden (D.-Ind.) charged last week that the "questions propounded to Khrushchev and Tito were skimmed-milk, watered-down interrogations which only afforded them an opportunity to continue their false propaganda and lies . . ."

To correct this, Madden proposed that future interviewers check their questions with U.S. officials.

Madden's suggestion brought comment — considered rather strange — from CBS President Frank Stanton,

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who addressed Washington's National Press Club on the subject last Tuesday. Madden's proposal to "clear" questions with American authorities, said Stanton, represented a threat to "freedom of the press." Stanton also claimed that CBS would have no part of interviews in which the questions were prearranged — intimating that the Khrushchev and Tito broadcasts were "spontaneous" performances.

This contention considerably astonished many members of the press corps, who agreed with the estimate of Washington *Star* foreign editor Constantine Brown: "Very likely, the Yugoslav dictator ruled out in advance any embarrassingly pointed questions." Such, at least, was the impression gained from the "sweetness and light" which characterized the interview.

Stanton further amazed his listeners by stating that CBS policy sternly forbids all "editorializing" in reporting the news. Those familiar with the work of CBS Vice President — and chief CBS "news analyst" — Edward R. Murrow (he conducted the "skimmed-milk" interview with Tito) view this statement as the "horse laugh of the year."

(One reporter present at the Press Club luncheon relates that, during the question-and-answer period, he passed up the following question: *Would you say that Murrow's broadcasts on Oppenheimer, American Legion "censorship" and Senator McCarthy were "reporting" or "editorializing"?* The chairman, however, did not propound the question to Stanton.)

Larson: Washington continues to puzzle over the antics of Arthur Larson, chief theorizer of "New Republicanism" and Director of the United States Information Agency. One of Larson's recent adventures occurred on NBC-TV's "Meet the Press." Attempting to justify his agency's activities to insistent reporters, Larson referred to the Khrushchev "de-Stalinization" speech of 1956.

"Now that speech," said Larson, "was never published. We got it and we published it, and it was through our publication of [it that left-wing Italian Socialist leader Pietro Nenni] found out about it . . ."

The question raised in Washington: with competent wire services carrying international news to every corner of the world, how does it happen that Italy's Nenni found out about the Khrushchev speech only through USIS?

(HUMAN EVENTS inquiries to AP and UP found that United Press sent the whole text of the Khrushchev speech to its European service. An Associated Press wire to HUMAN EVENTS stated: "We carried several thousand words including a partial text of 4,970 words to world service including Italy on Khrushchev de-Stalinization speech June 1956.")

"A Little Inflation . . .": C. Canby Balderston, Vice Chairman of the Federal Reserve Board, took the gloves off and dealt some stinging blows to the proponents of "just a little inflation" — undoubtedly meaning Harvard Professor Sumner Slichter (see HUMAN EVENTS for June 29) — in a little-noticed speech in the Capital recently. Around Washington, it is said that Mr. Balderston in fact expressed in his remarks the opinion of most of the other members of the powerful Board.

"A misconception that is part of our intellectual currency today," said Balderston, "is that a little inflation is 'a good thing.' A little inflation, sometimes thought of as roughly 2 per cent a year, would double the price level every 35 years. However, even if we accept the inevitability of creeping inflation, and I certainly do not, it is not possible to have just a 'little' inflation. Once the community accepts the prospect, the infant ceases to creep. It learns to walk, run and finally to gallop, even though the gallop may carry it over the brink of the precipice that everyone agrees must be avoided."

Book Event: *There Goes The Middle East*, by Alfred M. Lilienthal; Devin-Adair Co.; New York, N.Y.; $4.

In this well-documented survey, Alfred M. Lilienthal (author of *What Price Israel*), traces the events leading up to the now perpetual crisis that envelops the Middle East. Lilienthal's conclusion: "The United States is paying an exorbitant price for pursuing a policy contrary to the advice of every American foreign service officer and private citizen with any knowledge of the area."

As a cure for Near East difficulties, Lilienthal recommends a reversal of our sustained policy of all-out support for Israel. The basic problem, the author states, is the expansionist tendency of the Israeli state: if Western policy is exerted to blunt the advance of militant Zionism, a compromise settlement between Israel and the Arab nations can be achieved.

Letter from FRANK R. KENT, national columnist and author of the book *The Great Game of Politics:* "HUMAN EVENTS is the most stimulating, interesting and useful of all the Washington weeklies that I have ever seen. Its editors do a superb job and maintain high standards both as to accuracy and fairness."

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Article Section *Printed in Two Sections*

AMERICA'S CONSTITUTIONAL CRISIS
The Problem of the High Court

By FREDERIC NELSON

IF ANYONE wants to know what a "constitutional crisis" is like, it looks as if we were in the middle of one. The English put on constitutional crises when somebody in the Royal Family wants to marry an American or a gamesmaster. This American crisis is more important, to us anyway, because it concerns the very nature of our political system and the continued ability of the Government to protect the country from destructive Communist attack. In a series of edicts the United States Supreme Court has rendered the Government powerless to check the organization of secret Communist cells; to expose the nature and ramifications of the Red conspiracy; to maintain the integrity of the FBI's sources of information; or to keep subversives out of "sensitive" Federal bureaus.

How on earth did nine eminent Supreme Court justices, most of whom are no more "radical" than the average Joe at the Country Club on Saturday afternoon, manage to foul things up so that Americans in all walks of life fear for the security of the Nation, while the Communists openly boast that they never had it so good? There is no single answer, of course, but for one clue you might look into the tendency of middle-aged men to assume that young intellectuals just out of college know all the answers. Even a Supreme Court justice is probably a good-hearted sucker for the idea that the top young man in the graduating class at an Ivy League Law School has the latest word on the Constitution. Most of the justices take on such young fellows as their clerks. Who are these "brains" and what are their backgrounds?

Even the most casual student of the Supreme Court's recent decisions in the so-called "civil liberties" cases wants to know, "Who makes up the reading lists for the eminent justices?" Their opinions bristle with citations from sociologists and political theorists whose works one would hardly expect a Supreme Court justice to have read. Some people suspect that those "clerks" – just out of law schools more or less on the left side of the fence – have been familiarizing their bosses with 4 Gunnar Myrdal 907 (instead of 17 U.S. 1165).

The suspicion that there may be some neo-Alger Hisses in the High Court's establishment doubtless accounts for the recent recommendation by the Commission on Government Security that employees of the judicial branch should be screened for basic loyalty because "Federal judges, busy with overcrowded court calendars, must rely upon assistants to prepare briefing papers for them. False or biased information inadvertently reflected in court opinions in crucial security, constitutional, governmental or social issues, could cause severe effects to the Nation's security."

Anyway it will be no surprise if it turns out that the Court's homework has neglected the reports of the hearings which the Senate's Internal Security Subcommittee and the House Un-American Activities Committee have been holding on the general subject of Communist subversion in American life. A little more attention to these sensational but usually ignored reports ought to convince even the most "liberal" jurist that the cases which have been coming up to the Supreme Court of late are concerned only remotely with the rights of individuals to their political views, but have a great deal to do with a ramifying conspiracy, almost impossible to expose in its entirety, to subject America to Communist dictatorship.

Take Justice Black's opinion in the Konigsberg case, in which the court upset the efforts of the California Bar to exclude from the practice of law a young man who had refused to tell the Bar's examining committee whether or not he was or had been a Communist. Konigsberg – when asked the simple question, "Are you a Communist?" – went into the familiar song and dance about how he was faced with "nameless accusers or informers"; and that, if he did answer the question, "you would get a dozen informers who would say the opposite"; and that anyway the question invaded his rights of "free opinion and free speech" and that the legal profession should champion these rights.

As a matter of fact, one non-faceless informer named Mrs. Bennett had testified in Konigsberg's presence that she knew him to be a Communist; but, when asked whether he cared to deny her testimony, Konigsberg said, "That is a question relating to opinions, beliefs, political affiliations."

All this might seem, as it did to Justice Harlan, to cast doubt on the desirability of this young man as a member of the California Bar, or at any rate deter the Supreme Court from interfering in the matter.

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But not Justice Black. His assistant or clerk could have briefed him, but apparently didn't. In an encomium upon the honesty and uprightness of the applicant's life, Justice Black mentioned the fact that, after joining the Army, Konigsberg "was selected for training as an orientation officer in the Army's information and education program and in that capacity served in North Africa, Italy, France and Germany. As an orientation officer one of his principal functions was to explain to soldiers the advantages of democracy as compared with totalitarianism."

This must have split the sides of the Senate Internal Security Subcommittee which, in the summer of 1954, went pretty thoroughly into the activities and personnel of the Information and Education Division of the United States Army. That section was found to be loaded with Bolos and left-wingers whose activities, unearthed in testimony before the committee, included the publication of a series of Army Talks, among them one on China which assured the wondering troops that "Communists" (end quote) were not really Communists at all.

But, to Justice Black and presumably the court majority, service with a group which was loaded with left-wingers is evidence of a "forceful showing of good moral character." Of course this individual may have been "clean" as J. Edgar Hoover's tooth; the point is that, if you're making a case for "innocence by association," don't pick this Information and Education outfit! Really, some alert assistant or research analyst ought to have pulled that one out of the Justice's text.

If the Court is actually setting itself up as a third legislative chamber, it ought to go to great pains to understand what it is legislating about. Some research into the Internal Security Committee's investigation of the penetration of communism into the educational field might have headed off another howler, this one from the majority opinion in the case of New Hampshire's Professor Sweezy: "It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the legislative process tends to impinge upon highly sensitive areas of freedom of speech or press, freedom of political association and freedom of communication of ideas, *particularly in the academic community.*"

Why "particularly in the academic community"? With almost every college and university faculty sheltering at least one or two Veterans of the Fifth Amendment, the impartial observer might conclude that the "academic community" should receive especially careful attention from the "investigating process." The testimony of Bella Dodd, for example, on the special vulnerability of educators to the wiles and sophistries of communism might have profitably been called to the attention of the court by some law clerk who was not curled up with a good book on the evils of "McCarthyism."

THIS GETS US to the momentous Watkins case in which the Supreme Court undertakes to set new limits on the investigative powers of Congress. Of course, few would undertake to prove that every Congressional investigation and every question posed by an investigating committee is above criticism. I myself, without knowing too much about it, doubt the wisdom of attempting to compel a witness to squeal on his old brothers in the bonds of communism. The question which the committee has to ask itself is whether the possible advantage of prosecuting Arthur Miller, for example, outweighs the disadvantage of a hostile popular reaction to all Congressional investigations. The basic object is to persuade wavering Communists to leave the party and tell what they know. It is quite possible that some such people hesitate to emerge for fear of being compelled to give information concerning others.

The other side of the argument, and the one which prevailed in Congressional circles, is that a repentant Communist casts serious doubts upon the genuineness of his change of heart if he refuses to name his associates in subversion. And of course it is unfair that prominent witnesses with popular followings and curvaceous wives should get a fairer deal than less fancy converts. Nevertheless, the Watkins and Sweezy decisions certainly suggest that committees of Congress would do well to pick their contempt victims with an eye to how they look on television.

However, this ought to be a matter for the discretion of the committee. If its members think it essential to punish recalcitrance by citing a witness for contempt, the Congress must retain the power to do so. As Justice Black remarked back in the days when he was a Senator from Alabama, "There is no power on earth that can tear away the veil behind which powerful and audacious and unscrupulous groups operate, save the sovereign legislative power armed with the right of subpoena and search" — and with the power to compel reply to questions.*

In those days the "powerful and audacious and unscrupulous groups" were mainly millionaires and entrepreneurs in the electric power industry. It was considered reasonable to push them around. I seem to recall that somebody even incited a midget to sit in J. Pierpont Morgan's lap while he was testifying and nobody blew the whistle. Now that the witnesses are Communist conspirators for the overthrow of the United States, the learned Justices are for limiting the "sovereign legislative power."

In this same Sweezy opinion occurs the astonishing statement, which seems intended to apply to the Communist party, that "any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents . . . We do not now conceive of any circumstances wherein a state interest would justify infringement of rights in these fields." Sweezy is a teacher in New Hampshire and the people of that state seem to have imagined that they had an interest in what was being taught in their educational institutions. Had they read the Court's

* For the text of this statement by Black, as well as a similar one by Frankfurter, see page 4.

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dictum in the Steve Nelson case, they would have understood that the states are supposed to have no legitimate interest in subversion at all!

A competent law clerk would have suggested that a state interest in subversion of the United States is suggested in Article 4, Section 4, of the United States Constitution, which reads: "The United States shall guarantee to every state in this union a Republican form of government and shall protect each of them against invasion and, on application of the legislature, or of the Executive when the legislature cannot be convened, against domestic violence."

It doesn't seem to me altogether a quibble – or at any rate no worse a quibble than a lot we have been getting lately – to suggest that the states have as much interest in the possible overthrow of the United States from the inside as from the outside; and that, inasmuch as the states are guaranteed a Republican form of government by the United States, it would be suicidal for the states to remain indifferent to subversion which might easily make the Federal guarantee as useless as a three dollar bill. The California Un-American Activities Committee for example, has turned up a lot of important leads which Federal authorities could follow up later.

It is a little difficult to see what Justice Harlan's law clerk could have done to steer him away from that dreary routine on the meaning of the word "organize" as used in the Smith Act. As a lay ignoramus got it, Justice Harlan meant that, unless a Communist was present when the Communist party was "organized" in 1945, he could not be said to have "organized" Communist cells or apparatuses after that year. Perhaps the Justice's clerk should have suggested that an equally good date for the organization of the U.S. Community Party is 1919, a date which would have sheltered most Reds younger than William Z. Foster behind the statute of limitations. But for the lay ignoramus, who can't see anything confusing in the idea that a Communist might right now "organize" a cell in a labor union or college faculty, the Court had a hard time making sense.

Fundamental to the release of the California Communists, is the notion, which crops out throughout the Court's opinion, that freedom of speech and political belief is somehow involved. Another basic fallacy is that the Communist conspiracy is no longer dangerous. These delusions are not confined to Supreme Court justices. *The New York Times,* hailing the Smith Act opinions as "a new birth of freedom," declared that "the time is passing when the existence of a small group of persons with warped minds and twisted judgments and calling themselves Communists is a menace requiring us to suppress our ancient freedoms."

Of course we haven't suppressed any "ancient freedoms," as the ability of the Communists to warp the minds and twist the judgment of a distressingly large portion of the non-Communist community is sufficient proof. More depressing are these decisions in which the court revealed a bland indifference to the growing menace of internal subversion and appeared to accept the notion that a Communist conspirator could not be considered guilty of "incitement" unless he managed to incite somebody to blow up the United States Mint within the next half-hour.

The idea that the Communist party is harmless is, of course, being exploited to the limit by the party itself. In its brief asking the Supreme Court to outlaw the Smith Act, the party lawyers said: "Developments of the last few months indicate that these relationships [between Russia and the U.S.] are beginning to undergo a profound change. For this reason alone, the position of the Court of Appeals that it is legally bound to assume that the fears expressed by Congress in 1950 provide an adequate, competent and conclusive picture of reality, is unreasonable, if not wholly irrational."

Although the present Court has not overtly reversed its own opinion in the Eugene Dennis case, its latest ukase represents a substantial reversal of its earlier view that "the mere fact that, from the period 1945 to 1948, petitioners' activities did not result in an attempt to overthrow the Government by force and violence is, of course, no answer to the fact that there was a group that was ready to make the attempt." The California decision did not declare the Smith Act unconstitutional; it merely made it all but impossible to enforce.

And that may have been the smartest idea some bright law clerk has developed since he left law school!

In spite of the predictions by "liberal" columnists that the fuss will subside and that Congress will lie down and play dead, I have a hunch that Congress will do nothing of the kind. It can't, if only because failure to meet these repeated challenges will lead to judicial dictatorship, however amiably it may be disguised. If Congress may not question a witness without explaining in elaborate detail just what specific statute any isolated question is expected to produce; if Communists may not be laid by the heels until the Red putsch has succeeded; if a trust may be upset because the Supreme Court thinks the maker of the trust should have made it differently; if the FBI must expose its files to Communist lawyers whenever the files concern the testimony of a Government witness; and if even Dean Acheson is not privileged to fire an employee as a security risk, then we have something like judicial dictatorship already. Neither Congress nor the American people can settle for anything like that.

TWENTY YEARS AGO, when the Supreme Court declared various acts of Congress unconstitutional, the "liberals" did not hesitate to propose drastic remedies. The late Representative Maury Maverick declared that, unless the Court abandoned "the practice of functioning as a super-legislature and a super-President," the people should require it. Senator George Norris complained that "the people can change Congress but only God can change the

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Supreme Court." Nevertheless, he thought the people ought to try. Jackson, Jefferson, Lincoln and Grant were quoted on the side of telling the Supreme Court to get back behind the balk line, or else. A case called *Ex Parte McCardle* was exhumed from obscurity since 1868 to show that in at least one instance the Supreme Court, under Chief Justice Chase, had refused to hear a case in which Congress specifically denied jurisdiction to the Supreme Court. Maybe that device could be made to serve again.

This time, of course, the "liberals" see no cause for alarm and are raising their hands in holy horror at the mere suggestion that anyone should be so bold as to "defy the Supreme Court." But Congress will hardly give up so easily. Its power to "do something" had the endorsement of a former semi-liberal member of the court itself.

Former Justice Roberts, commenting on the McCardle case, raised an interesting question: "What is there to prevent Congress taking away, bit by bit, all the appellate jurisdiction of the Supreme Court of the United States, not doing it by direct attack but by that sort of indirect attack? I see nothing. I do not see any reason why Congress cannot, if it so decides, take away entirely the appellate jurisdiction of the Supreme Court of the United States over State supreme court decisions. The jurisdiction is exercised now under the terms of the judiciary act. Suppose Congress should decide to let the decisions of State courts of appeal be final on constitutional questions. How could the Supreme Court assert a power to take those questions, notwithstanding the act of Congress, in view of the language of the third article of the Constitution (the article defining the judicial power)?"

Surely this is something those erudite law clerks might have looked into, if only to warn their bosses of what might happen if they pushed Congress too far. It would be regrettable if the Supreme Court's powers as umpire were destroyed, for, without some final body authorized to decide when constitutional limits have been exceeded by Congress or the Executive, it is difficult to see how a Federal system of balanced powers could be made to operate. But an umpire who legalizes the spitball on the field and seems unable to detect a wild pitch can hardly complain when the pop bottles fly. And a Supreme Court which so far misconceives its function as virtually to paralyze Congress and the Executive in their efforts to protect the country against internal subversion must be said to have asked for whatever reprisals follow.

Frederic Nelson has been Associate Editor of the *Saturday Evening Post,* in charge of the editorial page, since 1942. From 1929 until 1942, he was editorial writer for the Baltimore *Sun.* He won the Freedoms Foundation Award, for an editorial, in 1951. His most recent contribution to HUMAN EVENTS was "The Supreme Court Marches On — To the Left," May 18, 1957.

THIS IS WHAT THEY SAID

"Undoubtedly, the names of people who have done nothing criminal or wrong, or nothing even offending taste perhaps, have been mentioned in connection with these investigations . . . But where so much that the Department of Justice was doing under Daugherty was not innocent, it is highly important that even innocent transactions in the general field of fraud and suspicion be explained in order to separate the sheep from the goats. The question is not whether people's feelings here and there may be hurt, or names 'dragged through the mud,' as it is called. The real issue is whether the danger of abuses and the actual harm done are so clear and substantial that the grave risks of fettering free congressional inquiry are to be incurred by artificial and technical limitations . . .

"The procedure of congressional investigations should remain as it is. No limitations should be imposed by congressional legislation or standing rules. The power of investigation should be left untrammelled, and the methods and forms of each investigation should be left for determination of Congress and its committees as each situation arises. The safeguards against abuse and folly are to be looked for in the forces of responsibility which are operating from within Congress, and are generated from without." — Felix Frankfurter in *The New Republic,* May 21, 1924.

"An investigation is precisely what it purports to be — an investigation. Sometimes attempts are made to discredit it by calling it a fishing expedition. It is not a trial based upon an indictment where the facts are already known and merely need presentation to a jury. It is a study by the government of circumstances which seem to call for study in the public interest. And the public hearing is usually, certainly in important investigations, preceded by a long period of extensive research.

"There is no power on earth that can tear away the veil behind which powerful and audacious and unscrupulous groups operate save the sovereign legislative power armed with the right of subpoena and search . . . Witnesses have declined to answer questions from time to time. The chief reason advanced has been that the testimony related to purely private affairs. In each instance with which I am familiar, the House and Senate have steadfastly adhered to their right to compel reply, and the witness has either answered or been imprisoned . . .

"Public investigating committees, formed from the people themselves or from their public representatives . . . have always been opposed by groups that seek or have special privileges. The spokesmen of these greedy groups never rest in their opposition to exposure and publicity. That is because special privilege thrives in secrecy and darkness and is destroyed by the rays of pitiless publicity." — Hugo Black in *Harper's,* February, 1936.

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